

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

DEBORAH BARONE	§	
	§	
Plaintiff,	§	
	§	
	§	
	§	
	§	
v.	§	Civil Action No. 4:20-cv-03950
	§	
ETHICON INC. and JOHNSON &	§	
JOHNSON	§	
	§	
	§	
Defendants.	§	

**JOINT STIPULATION OF DISMISSAL WITH PREJUDICE
AS TO CERTAIN OF PLAINTIFF'S CAUSES OF ACTION**

Pursuant to the Court's March 4, 2021 order, Defendants Ethicon, Inc., and Johnson & Johnson ("Defendants") and Plaintiff Deborah Barone ("Plaintiff") (collectively the "Parties") stipulate pursuant to Rule 41 of the Federal Rules of Civil Procedure that the following Plaintiff's claims should be dismissed with prejudice:

- Counts I and XIV (only to the extent those claims are premised on allegations of manufacturing defect), and
- Counts II, IV, VII, VIII, X, XI, XII, XV, XVIII

This stipulation of dismissal does not concern Plaintiff's remaining causes of action: Counts I and XIV (to the extent they are based on allegations of design defect or failure to warn), and Counts

III, V, VI, and IX, XVII.¹ The parties further agree that this stipulation fully addresses the relief sought by Defendants' pending motion for summary judgment (Dkt. Nos. 57, 58).²

WHEREFORE, PREMISES CONSIDERED the Parties respectfully request that the following Plaintiff's claims against Defendants be dismissed with prejudice, and that the parties bear their own costs as to those claims:

- Counts I and XIV (only to the extent those claims are premised on allegations of manufacturing defect), and
- Counts II, IV, VII, VIII, X, XI, XII, XV, XVIII.

¹ Plaintiff did not allege a Count XIII in her short form complaint. Count XVI – Loss of Consortium was alleged in the complaint by Plaintiff's husband, August Barone. However, that claim was dismissed with prejudice by joint stipulation on April 3, 2017. *See* Dkt. Nos. 25, 26.

² The parties agree that Plaintiff may still assert fraudulent concealment (Count VII) and the discovery rule and tolling (Count XVIII) as defenses, exceptions or arguments against the statute of limitations. The parties further agree that the dismissal of Count IV shall not limit Plaintiff's claims under Counts III and V. The parties also agree that the dismissal of Count X will not limit the availability of damages for emotional distress that may be awarded as a result of Plaintiff's remaining causes of action.

Respectfully submitted,

/s/ Alex Barlow
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Attorney for Defendants Johnson & Johnson and Ethicon, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on March 19, 2020 on counsel of record via the Court's CM/ECF system:

/s/ Christopher Cowan
Christopher Cowan